IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 570 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

REGIONAL DIRECTOR EMPLOYEES STATE INSURANCE CORPORATION

Versus

ARYODAYA SPINNING & MANUFACTU-RING CO LTD

Appearance:

MR SR SHAH for Petitioners

MR VIMAL PATEL for M/S. NANAVATI ASSOCIATES for Respondent.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/05/96

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated 12/5/1978 of the Employees' Insurance Court at Ahmedabad in Application (ESI) No. 21 of 1975. The appellant herein had been the opponent in the Application and the respondent herein had been the applicant in the Application. They are referred to as 'the applicant' and 'the opponent' as they were described in the Application

before the trial Court.

2. The applicant preferred the Application in question before the trial Court praying for a declaration that the sum of Rs. 26,040-59 paise which was remitted by the applicant to the National Defence Fund (for short 'NDF') by virtue of an agreement dated 19/1/1972 was not covered by the definition of the term 'wages' u/S. 2(22) of the Employees' State Insurance Act, 1948 (for short 'the Act') and, therefore, the applicant was not liable to pay the Employers' Special Contribution in relation thereto u/S. 73A of the Act and finally that the action of the opponent in demanding the same would be illegal, improper and unjust. A consequential relief of permanent injunction was prayed for in the Application. The facts resulting in the reliefs as aforesaid run into a narrow compass. It is not in dispute that 26/1/1972 had been declared as paid holiday by virtue of a registered agreement dated 19/1/1956 under the provisions of the Bombay Industrial Relations Act, 1947 (for short 'BIR Act'). Such an agreement was entered into between the Ahmedabad Mill Owners Association, Ahmedabad (AMOA) and the Textile Labour Association, Ahmedabad. That being the part of the contract the workers were to get their wages without work on 26th January. However, by a special agreement dated 19/1/1972 between the Union and the AMOA it was agreed that 26th January would be a working day so that the workers who reported for work would be paid wages for that day accordingly and the amount equivalent to wages of that day so earned would be remitted to the AMOA which in turn would send the amount to NDF (National Defence Fund). Accordingly the applicant remitted a sum of Rs. 19,530/- on 23/2/1972 and Rs.6,510/- on 3/4/1972 totaling to Rs.26,040-59 to the AMOA as per the aforesaid special agreement in respect of 26th January 1972. It was the case of the applicant that the applicant would not be liable to pay the employees' special contribution as the same did not fall within the meaning of term 'wages' as defined u/S. 2(22) of the Act. However, the opponent/appellant herein demanded Rs. 1042/- as Employers' Special Contribution from the applicant u/S. 73A (since repealed) with regard to the aforesaid amount remitted to the NDF and threatened the applicant for its recovery as arrears of land revenue u/S. 73D of the Act. It is this action which has been challenged by the applicant.

3. The opponent (appellant herein) resisted the Application as per written statement exh. 7 inter-alia contending that the workers had received wages for 26th January 1972 and, therefore, the applicant would be

liable to pay the Employers' Special Contribution and Employees' contribution under the provisions of the Act. According to the opponent the amount so earned would be covered u/S. 2(22) of the Act. The trial Court after going through the agreement, after appreciating the evidence flowing from the special agreement in respect of 26th January, 1972 and after visualising the nature of the contribution to the NDF, came to the conclusion that the applicant by virtue of the agreement or settlement exh. 20 (the agreement dated 19/1/1972) had to pay wages as had been agreed between the Union and the AMOA to the NDF and that amount had to be paid in the name of workers and the reasons for so doing is to echo the feeling of the textile workers for national defence and that this amount was clearly something other than remuneration, that was either paid or payable to the employees on 26/1/1972 under the terms of employment either expressed or implied and finally that the agreement exh. 20 did not say that the applicant had to pay to the workers the said amount and in turn they had to contribute the same to the NDF. The facts would indicate that the agreement did not say why in consideration of the agreement the employees would be paid at double the rate for that day to constitute the same as wages for that day or remuneration for that day and that it would clealry spell out that the Union agreed to 26/1/1972 to be a working day instead of paid holiday and also agreed that the workers who worked on that day would be given only their normal wages as on working day and that the employer should pay the same amount to the NDF in the name of the employees. It is under such circumstances that the trial court found that it would be very difficult to hold that the amount so paid could be called as 'wages'.

4. Following order, therefore, was passed by the trial Court :-

> "It is hereby held that the amount of Rs.26,040-59 ps. donated to the NDF by virtue of agreement dt. 19/1/72 between the AMOA and the union in the name of its employees are not wages and the applicant is not liable to pay Employers' Special Contribution for that amount. The opponent is hereby restrained from recovering the amount of Rs.1,042/- from the applicant by way of Employers' Special Contribution on the wages aforesaid as of 26/1/72. No order as to costs."

5. The opponent-Corporation being the appellant herein has brought under challenge the aforesaid judgment and order of the trial Court by virtue of sec. 82 of the

Act.

6. Heard Mr. S.R. Shah, learned counsel appearing for the opponent-appellant herein and Mr. Vimal Patel, learned counsel appearing for M/s. Nanavati Associates for the applicant-respondent -company.

7. I have gone through the facts of the case and more particularly the special agreement exh. 20. Mr. Patel pressed into service a decision in the case of Ansuyabhai Vithal v/s. Mehta (J.H.) reported in 1959-II L.L.J. 742 submitted before the trial Court as well as decision in the case of S.T. Reddiar & Sons v/s. E.S.I. Corporation reported in 1989, vol.74 F.J.R. at page 77. The decisions would relate to definition of 'wages' or the meaning of word 'remuneration' used in sec. 2 (22) of the Act. Placing reliance on these authorities Mr. Patel submitted that just as ex-gratia payment cannot be said to be 'wages' or 'other remuneration' ex-gratia work cannot in turn be said to be one that would bring to the workers either wages or remuneration. If that is so the donation of one day's work in substance arising from the agreement exh. 20 cannot bring such amount for such work for such worker who has worked on the republic day within the definition of 'wages' contained in sec. 2 (22) of the Act. The argument is quite attractive, but instead of deciding the question of law as would rise from this argument, I am of the opinion that the facts of the case elaborately spelt out by the trial Court would clearly reveal that the amount remitted by the respondent (applicant of the Application) could not be said to attract liability under the provisions of the Act arising on account of the provisions contained u/S. 2(22) of the Act. Having gone through the facts of the case arising from and revolving round exh. 20, I find that the finding of facts reached by the trial Court is unassailable. affirmed.

8. In the facts of the case, therefore, this appeal cannot be allowed. The appeal is, therefore, dismissed with no order as to costs.

* * *